IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL MISC.NO.62521 M OF 2006

DATE OF DECISION: NOVEMBER 16, 2006

Baby and another

.....Petitioners

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

PRESENT: Mr. K. S. Dadwal, Advocate,
for the petitioners.

Mr. M. C. Berry, Sr.DAG, Punjab,
for the State.

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RANJIT SINGH, J.

Prayer in the present petition is for quashing of FIR No.163 dated 25.9.2006 under Sections 376, 506 IPC, registered at Police Station Mahilpur, District Hoshiarpur, mainly on the ground that continuation of further proceedings in this case, having regard to its peculiar facts, may amount to abuse of the process of Court.

Facts in brief may need a notice.

The petitioners came to know each other and developed a liking. During their association, petitioner No.1 conceived. When this fact came to the knowledge of petitioner No.2, he shared the same with his family members.

The family of petitioner No.2 appears to have expressed reservation about any alliance between the petitioners. The petitioners got married against the wishes of their families on 25.12.2005. Unmindful of the objection by the family members, they started living as husband and wife and ultimately, petitioner No.1 gave birth to a male child on 25.9.2006. It appears that during this period, petitioner No.1 came under the influence of her parents, especially her father and at his instance, she lodged an FIR, Annexure P-1. Later, family of petitioner No.1 had a change of mind and by deciding to forget everything approved the alliance between the petitioners. It is disclosed in the petition that both the petitioners at present are now living as husband and wife and are grooming their male off-spring. The parents of both the petitioners have also fully reconciled with the situation. In fact Mr.Dadwal points out that father of petitioner No.1 is present in Court to confirm that he has no objection to this alliance and wants an end to this criminal proceedings as the petitioners are legally wedded husband and wife and are living as such with the blessing of both the families. Both the petitioners are also present in person before the Court. They both have been heard on being duly identified by counsel and have submitted before the Court that they have performed marriage, which has the approval of both the families. Petitioner No.1 has stated that she would not be interested in pursuing any proceedings consequent to the FIR impugned herein, which was got lodged by her.

It is required to be noticed that the impugned FIR has registered under Sections 376/506 IPC. Though this FIR was lodged by petitioner No.1 but now she is co-petitioner in the present petition,

which is supported by affidavit filed by her to say that she is legally wedded wife of petitioner No.2. The averments in the petition, which are supported by an affidavit filed by petitioner No.1 reveal that she is now leading a married life with petitioner No.2 happily and have a male child. It is stated through petitioner No.1 in the petition that this FIR was got recorded by her under the influence of her father and since the matter has now been amicably resolved between the families to the satisfaction of everyone, she would not be interested in pursuing the present proceedings arising out of the FIR. It can, thus, be said that petitioner NO.1 is no more standing by the allegations made in the FIR which she apparently had made being under the influence of her father and obviously was not the truthful account of events. It can be said that the petitioners were having an affair which became physical and as such, allegations of rape made against petitioner No.2 are not made out. It is a case of consent. In any event, they are now married and living together. Under such circumstances, allowing the proceedings to continue would be an abuse of process of the Court.

By now, it is fully settled that High Court in exercise of its inherent powers can quash proceedings if it finds that allowing of any such proceedings to continue would be an abuse of process of the Court or that ends of justice require that the proceedings be quashed. In this regard, observation of the Hon'ble Supreme Court in **State of Karnataka Vs. L.Muniswami AIR 1977 SC 1489** can be referred. It was observed in this case, that the ends of justice are higher than ends of mere law. It was further said that though justice has got to be administered accordingly to the laws made by the

legislature yet the Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. As per the Hon'ble Supreme Court, the lame prosecution could be quashed. The relevant observation of the Hon'ble Supreme Court is reproduced below:-

> "In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve that a Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction."

While interpreting the sweep of Section 482 Cr.P.C, the Hon'ble Supreme Court in **Madhu Limaye Vs. State of Maharashtra, AIR 1978 SC 47** had observed that there are only two exceptions for exercise of power under this Section and these are:-

> "(1) That the power is not to be resorted to if there is a specific provision in the Code for the redressing of the grievance of the aggrieved party;
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> (2) That it should be exercised very sparingly to prevent abuse of any Court or otherwise to secure the ends of justice."

There is no need to burden this order with other judgements on the sweep of Section 482 Cr.P.C.

The facts in this case, as noted above, would disclose a peculiar story. It can be made out that both the petitioners were having an affair, which became physical, leading to a birth of male child. There were some differences but now they have converted this alliance into a legal marriage. Having regard to these peculiar facts, it is doubtful if offence under Section 376 IPC would be made out or not. These are distinguishing and peculiar features of this case. These facts would make this case to be a fit one for exercising of powers under Section 482 Cr.P.C. Any further proceedings or prosecution, if allowed to continue in this case, be a wastage of time of the court and an exercise in futility. Rather, allowing the proceedings to continue in this case would be clearly an abuse of the process of Court. Since petitioner No.1 and her family would not now support prosecution, the end result of this case is a fore-gone conclusion. No useful purpose as such is likely to be

served in allowing the trial or the prosecution to continue.

Accordingly, the present petition is allowed and the FIR No.163 dated 25.9.2006 under Sections 376, 506 IPC and the subsequent proceedings arisen thereof are quashed.

November 16 , 2006 **(RANJIT SINGH)**
khurmi **JUDGE**